IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5418 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CM MATHEW - Petitioner
Versus
STATE OF GUJARAT & 1 - Respondents

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Appearance :
MS DAXA R VYAS for Petitioner(s) : 1,
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/03/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate order for quashing and setting aside the impugned action of initiating departmental inquiry against the petitioner vide letter dated 11.03.1997 and permanently quashing and setting aside the impugned chargesheet dated 21.12.1993.

2. At the relevant time the petitioner was serving as Executive Engineer and was in charge of certain projects and was holding charge of (Roads & Buildings) Division No.1 for the period from 18.10.1983 to 22.12.1989 and that by chargesheet dated 21.12.1993, it was decided to initiate Departmental inquiry against the petitioner for various irregularities and misconduct committed by the petitioner. That the petitioner retired on 28.02.1993 and by communication dated 28.03.1994, the petitioner requested the Deputy Secretary, Roads and Buildings Department, Gandhinagar to consider certain aspects regarding proposed inquiry such as non delivery of the chargesheet. It was the contention on behalf of the petitioner that last chargesheet was delivered only on 24.12.1993 which is after four years and considering the provisions of Rule 189-A of the Bombay Civil Services Rules ("B.C.S.R." for short) such departmental inquiry is not permissible. That by order dated 11.03.1997, Inquiry Officer was appointed and by communication dated 15.03.1997 to the Deputy Secretary, Roads and Buildings Department, Gandhinagar, the petitioner requested to drop

inquiry as it has not permissible considering Rule 189-A of the B.C.S.R. The petitioner again sent reminder on 24.01.1997. By communication dated 04.06.1997, the Deputy Secretary, Roads and Buildings Department informed the petitioner that initiation of the Departmental inquiry is in accordance with law and the petitioner can make representation before the Inquiry Officer. By Communication dated 14.07.1997, the petitioner was directed to remain present on 07.08.1997 and was requested to make representation whether the petitioner wants to engage any friend or not. Being aggrieved and dissatisfied with the initiation of the Departmental Inquiry by chargesheet dated 21.12.1993 and further appointment of Inquiry Officer, the petitioner has preferred present Special Civil Application under Article 226 of the Constitution of India.

3. Ms. Mamta Vyas, learned Advocate appearing on behalf of the petitioner has submitted that the impugned action of the respondents in initiating departmental inquiry and the issuance of the chargesheet dated 21.12.1993 is against the provisions of Rule 189-A of B.C.S.R. It is submitted that work was completed on 16.12.1989 and even final payment was made on 16.12.1989 by drawing the final bill (Page No. 29) and therefore, limitation period would start from 16.12.1989 and considering Rule 189 – A of B.C.S.R., chargesheet ought have been issued prior to 16.12.1993 and against which the chargesheet has been

issued on 21.12.1993 and therefore, it is hit by Rule 189-A of the B.C.S.R. and requires to be quashed and set aside. It is submitted that the petitioner retired on 28.02.1993 and the Departmental Inquiry is initiated after the petitioner has retired and as per Rule 189-A of the B.C.S.R., the Departmental Inquiry is required to be initiated within a period of four years from the event and considering last final payment on 16.12.1989, work is said to have been completed on 16.12.1989, impugned chargesheet and the initiation of the Departmental Inquiry is required to be quashed and set aside. No other submissions have been made on behalf of the petitioner except breach of Rule 189- A of the B.C.S.R.

4. Petition is opposed by Shri Dipen Desai, learned Assistant Government Pleader. It is specifically denied that final payment was made on 16.12.1989 and the work was over on 16.12.1989 as alleged and / or contended on behalf of the petitioner. Relying upon (Page No. 29), it is submitted that bill dated 16.12.1989 was not final bill but it was Running Account Bill and even in the said bill, it is specifically mentioned that the work is in progress. It is also further submitted that necessary inspection was carried out on 25.05.1993 by the Committee consisting of Deputy Executive Engineer (Roads and Buildings), Sub-Division, Visnagar, Executive Engineer, Gandhinagar and Executive Engineer (Roads And Buildings) Circle, Gandhinagar. Certain

irregularities were found committed by the petitioner in making the payment and in measurement, and therefore, chargesheet came to be issued on 21.12.1993 i.e. within a period of four years. It is submitted that the petitioner was in charge of the said project up to 22.12.1989 and the events are not separable, therefore, his tenure is to be considered and therefore, chargesheet dated 21.12.1993 is within the period of four years. It is submitted that lapses came to the knowledge only on 25.12.1993 and impugned chargesheet is within stipulated time as provided under Rule 189-A of the B.C.S.R., therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned Advocates appearing for the respective parties.

6. It is required to be noted that the petitioner was in charge of the aforesaid projects in question up to 22.12.1989 and he was in charge from 18.10.1983 to 22.12.1989. The petitioner retired on 22.02.1993 and the impugned chargesheet came to be issued on 21.12.1993. As the Departmental Inquiry was initiated against the petitioner after his retirement, provisions of Rule 189 A of the B.C.S.R/ would be attracted. It is permissible to initiate Departmental Inquiry if the same is within four years from such event. It is the contention on behalf of the petitioner that final payment was made on 16.12.1989 and the work was

completed and over on 16.12.1989. Therefore, when the chargesheet has been issued on 21.12.1993, the same is beyond the period of four years. On considering relevant bill dated 16.12.1989 (Page No. 29), it appears that it is not a final bill, however, the same is Running Account Bill and in the said Running Account Bill it is specifically mentioned that the work is in progress. Therefore, the contention on behalf of the petitioner that amount was settled and final payment was made on 16.12.1989 and work was completed on 16.12.1989, cannot be accepted. Necessary inspection was carried out by the Department on 25.05.1993 and the Department came to know about the lapses only on 25.05.1993. It is further submitted that even after 16.12.1989, some work was carried out and final payment was made by some another Executive Engineer against whom similar chargesheet was issued and as he has expired Departmental Inquiry against him was not further proceeded with. The only objection raised on behalf of the petitioner is that as Departmental Inquiry is not initiated within a period of four years, the same is not permissible as per Rule 189-A of the B.C.S.R. Now considering the fact that the petitioner was in charge between 18.10.1983 to 29.12.1989 and the events are not separable, therefore, his tenure is required to be considered and the petitioner was in charge of the aforesaid projects up to 29.12.1989 and the chargesheet has been issued on 21.12.1993, therefore, the same is within a period of four years, and the same is not

hit by Rule 189-A of the B.C.S.R.

7. It is required to be noted that initially when the petitioner submitted his objection, it was contended on behalf of the petitioner as the chargesheet was actually **Delivered** on 24.12.1993, i.e. after a period of four years, the same is hit by Rule 189 A of the B.C.S.R. It is also required to be noted that what is required to consider is dispatch and / or issuance of the chargesheet and not the date on which it is actually delivered and / or received by the petitioner and /or delinquent. It is also required to be noted that after final payment, inquiry was held in the month of May, 1993 more particularly on 25.05.1993 and the Department came to the knowledge of certain irregularities only on 25.05.1993. Even otherwise as stated above, chargesheet dated 21.12.1993 is within a period of four years considering his tenure up to 29.12.1989; events not separable and that the bill dated 16.12.1989 was not final bill and the work was in progress.

8. Under the circumstances, impugned chargesheet is not required to be quashed and set aside. So far as other submissions on merits and / or defences available to the petitioner are concerned, same can be submitted before the Inquiry Officer and in the Departmental proceedings.

9. For the reasons stated above, the petition fails. Rule is discharged. Interim relief stands vacated forthwith. Considering the fact that the chargesheet is dated 21.12.1993 and the same was stayed by this Court and more than ten years have passed and because of interim relief, Departmental Inquiry was not proceeded further, the respondents are directed to complete Departmental Inquiry within a period of 6 (six) months from today. However, there shall be no order as to costs.

[M.R.Shah, J.]

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